

1 The Honorable John C. Coughenour
2
3
4
5
6

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
5510
5511
5512
5513
5514
5515
5516
5517
5518
5519
5520
5521
5522
5523
5524
5525
5526
5527
5528
5529
55210
55211
55212
55213
55214
55215
55216
55217
55218
55219
55220
55221
55222
55223
55224
55225
55226
55227
55228
55229
55230
55231
55232
55233
55234
55235
55236
55237
55238
55239
552310
552311
552312
552313
552314
552315
552316
552317
552318
552319
552320
552321
552322
552323
552324
552325
552326
552327
552328
552329
552330
552331
552332
552333
552334
552335
552336
552337
552338
552339
552340
552341
552342
552343
552344
552345
552346
552347
552348
552349
552350
552351
552352
552353
552354
552355
552356
552357
552358
552359
552360
552361
552362
552363
552364
552365
552366
552367
552368
552369
552370
552371
552372
552373
552374
552375
552376
552377
552378
552379
552380
552381
552382
552383
552384
552385
552386
552387
552388
552389
552390
552391
552392
552393
552394
552395
552396
552397
552398
552399
5523100
5523101
5523102
5523103
5523104
5523105
5523106
5523107
5523108
5523109
5523110
5523111
5523112
5523113
5523114
5523115
5523116
5523117
5523118
5523119
55231100
55231101
55231102
55231103
55231104
55231105
55231106
55231107
55231108
55231109
55231110
55231111
55231112
55231113
55231114
55231115
55231116
55231117
55231118
55231119
552311100
552311101
552311102
552311103
552311104
552311105
552311106
552311107
552311108
552311109
552311110
552311111
552311112
552311113
552311114
552311115
552311116
552311117
552311118
552311119
5523111100
5523111101
5523111102
5523111103
5523111104
5523111105
5523111106
5523111107
5523111108
5523111109
5523111110
5523111111
5523111112
5523111113
5523111114
5523111115
5523111116
5523111117
5523111118
5523111119
55231111100
55231111101
55231111102
55231111103
55231111104
55231111105
55231111106
55231111107
55231111108
55231111109
55231111110
55231111111
55231111112
55231111113
55231111114
55231111115
55231111116
55231111117
55231111118
55231111119
552311111100
552311111101
552311111102
552311111103
552311111104
552311111105
552311111106
552311111107
552311111108
552311111109
552311111110
552311111111
552311111112
552311111113
552311111114
552311111115
552311111116
552311111117
552311111118
552311111119
5523111111100
5523111111101
5523111111102
5523111111103
5523111111104
5523111111105
5523111111106
5523111111107
5523111111108
5523111111109
5523111111110
5523111111111
5523111111112
5523111111113
5523111111114
5523111111115
5523111111116
5523111111117
5523111111118
5523111111119
55231111111100
55231111111101
55231111111102
55231111111103
55231111111104
55231111111105
55231111111106
55231111111107
55231111111108
55231111111109
55231111111110
55231111111111
55231111111112
55231111111113
55231111111114
55231111111115
55231111111116
55231111111117
55231111111118
55231111111119
552311111111100
552311111111101
552311111111102
552311111111103
552311111111104
552311111111105
552311111111106
552311111111107
552311111111108
552311111111109
552311111111110
552311111111111
552311111111112
552311111111113
552311111111114
552311111111115
552311111111116
552311111111117
552311111111118
552311111111119
5523111111111100
5523111111111101
5523111111111102
5523111111111103
5523111111111104
5523111111111105
5523111111111106
5523111111111107
5523111111111108
5523111111111109
5523111111111110
5523111111111111
5523111111111112
5523111111111113
5523111111111114
5523111111111115
5523111111111116
5523111111111117
5523111111111118
5523111111111119
55231111111111100
55231111111111101
55231111111111102
55231111111111103
55231111111111104
55231111111111105
55231111111111106
55231111111111107
55231111111111108
55231111111111109
55231111111111110
55231111111111111
55231111111111112
55231111111111113
55231111111111114
55231111111111115
55231111111111116
55231111111111117
55231111111111118
55231111111111119
552311111111111100
552311111111111101
552311111111111102
552311111111111103
552311111111111104
552311111111111105
552311111111111106
552311111111111107
552311111111111108
552311111111111109
552311111111111110
552311111111111111
552311111111111112
552311111111111113
552311111111111114
552311111111111115
552311111111111116
552311111111111117
552311111111111118
552311111111111119
5523111111111111100
5523111111111111101
5523111111111111102
5523111111111111103
5523111111111111104
5523111111111111105
5523111111111111106
5523111111111111107
5523111111111111108
5523111111111111109
5523111111111111110
5523111111111111111
5523111111111111112
5523111111111111113
5523111111111111114
5523111111111111115
5523111111111111116
5523111111111111117
5523111111111111118
5523111111111111119
55231111111111111100
55231111111111111101
55231111111111111102
55231111111111111103
55231111111111111104
55231111111111111105
55231111111111111106
55231111111111111107
55231111111111111108
55231111111111111109
55231111111111111110
55231111111111111111
55231111111111111112
55231111111111111113
55231111111111111114
55231111111111111115
55231111111111111116
55231111111111111117
55231111111111111118
55231111111111111119
552311111111111111100
552311111111111111101
552311111111111111102
552311111111111111103
552311111111111111104
552311111111111111105
552311111111111111106
552311111111111111107
552311111111111111108
552311111111111111109
552311111111111111110
552311111111111111111
552311111111111111112
552311111111111111113
552311111111111111114
552311111111111111115
552311111111111111116
552311111111111111117
552311111111111111118
552311111111111111119
5523111111111111111100
5523111111111111111101
5523111111111111111102
5523111111111111111103
5523111111111111111104
5523111111111111111105
5523111111111111111106
5523111111111111111107
5523111111111111111108
5523111111111111111109
5523111111111111111110
5523111111111111111111
5523111111111111111112
5523111111111111111113
5523111111111111111114
5523111111111111111115
5523111111111111111116
5523111111111111111117
5523111111111111111118
5523111111111111111119
55231111111111111111100
55231111111111111111101
55231111111111111111102
55231111111111111111103
55231111111111111111104
55231111111111111111105
55231111111111111111106
55231111111111111111107
55231111111111111111108
55231111111111111111109
55231111111111111111110
55231111111111111111111
55231111111111111111112
55231111111111111111113
55231111111111111111114
55231111111111111111115
55231111111111111111116
55231111111111111111117
55231111111111111111118
55231111111111111111119
552311111111111111111100
552311111111111111111101
552311111111111111111102
552311111111111111111103
552311111111111111111104
552311111111111111111105
552311111111111111111106
552311111111111111111107
552311111111111111111108
552311111111111111111109
552311111111111111111110
552311111111111111111111
552311111111111111111112
552311111111111111111113
552311111111111111111114
552311111111111111111115
552311111111111111111116
552311111111111111111117
552311111111111111111118
552311111111111111111119
5523111111111111111111100
5523111111111111111111101
5523111111111111111111102
5523111111111111111111103
5523111111111111111111104
5523111111111111111111105
5523111111111111111111106
5523111111111111111111107
5523111111111111111111108
5523111111111111111111109
5523111111111111111111110
5523111111111111111111111
5523111111111111111111112
5523111111111111111111113
5523111111111111111111114
5523111111111111111111115
5523111111111111111111116
5523111111111111111111117
5523111111111111111111118
5523111111111111111111119
55231111111111111111111100
55231111111111111111111101
55231111111111111111111102
55231111111111111111111103
55231111111111111111111104
55231111111111111111111105
55231111111111111111111106
55231111111111111111111107
55231111111111111111111108
55231111111111111111111109
55231111111111111111111110
55231111111111111111111111
55231111111111111111111112
55231111111111111111111113
55231111111111111111111114
55231111111111111111111115
55231111111111111111111116
55231111111111111111111117
55231111111111111111111118
55231111111111111111111119
552311111111111111111111100
552311111111111111111111101
552311111111111111111111102
552311111111111111111111103

1 relief without them as parties. Because Petitioners have not joined the Army and SPS as parties,
 2 this Court should order Petitioners to join them as respondents.

3 **II. FACTS**

4 This action involves Ft. Lawton, which is owned by the Army and located in Seattle. *See*
 5 Land Use Petition (“Petition”), Dkt. # 1-2 at p. 2. The Army is attempting to dispose of
 6 Ft. Lawton under the Defense Base Closure and Realignment Act of 1990, known colloquially as
 7 the “BRAC Act.” Pub. L. No. 101-510, Title 29, Part A (codified as amended in a note following
 8 10 U.S.C. § 2687). *See* Dkt. # 1-2 at pp. 4–10 (Petition). Much of the base disposal process is
 9 governed by Department of Defense (“DoD”) regulations. *See* 32 C.F.R. Parts 174 and 176.²

10 In November 2017, SPS and the City entered a “Public Process Partnership Agreement:
 11 School District Facilities, Fort Lawton, Memorial Stadium, and Seattle Center.” *See* Declaration
 12 of Roger Wynne, Exhibit 1. The City agreed to include provisions in its Ft. Lawton
 13 redevelopment plan to allow SPS to acquire up to six acres of land for development of park uses.
 14 *Id.* at 4.

15 In June 2019, as part of the Ft. Lawton disposal process, the City Council passed: (1) a
 16 resolution approving a redevelopment plan to submit to the Army, part of which applies for
 17 surplus federal property; (2) an ordinance authorizing an agreement with SPS through which SPS
 18 would seek 5–6 acres of that land from the Army for athletic fields to be used jointly by SPS and

22
 23

 ² The Department of Housing and Urban Development (“HUD”) is also involved in the process, but its regulations
 are substantively identical to DoD regulations. *Compare* 24 C.F.R. Part 586 (HUD) with 32 C.F.R. Part 174 (DoD).

1 the City; and (3) an ordinance rezoning a portion of the property. *See* Dkt. # 1-2 at p. 3
 2 (Petition).³

3 Petitioners allege the City's June 2019 actions are unlawful, claiming they violate DoD's
 4 base disposal regulations and state law. *See* Dkt. # 1-2 at pp. 10–21 (Petition). Among other
 5 things, Petitioners claim SPS is disqualified from seeking Ft. Lawton property and DoD must
 6 follow alternative disposal methods, not its base disposal regulations. *Id.* at pp. 11, 13–14. The
 7 Petition does not name the Army or SPS as a party.

8 **III. ISSUE PRESENTED**

9 Should this Court enter an order directing Petitioners to join the Army and SPS as
 10 respondents?

11 **IV. EVIDENCE**

12 For this motion, the City relies on the Petition's relevant factual allegations and the
 13 Declaration of Roger Wynne.

14 **V. ARGUMENT**

15 “If a person has not been joined as required, the court must order that the person be made
 16 a party.” Fed. R. Civ. P. 19(a)(2). This Court should order Petitioners to join the Army and SPS
 17 as respondents.

18 **A. The Army is a necessary party under LUPA and Fed. R. Civ. P. 19(a).**

19 The Army should be joined as a party under state law and federal rules. Petitioners sued
 20 principally under Washington's Land Use Petition Act (“LUPA”).⁴ *See generally* Dkt. # 1-2

21 ³ The Petition attaches Ord. 125841, which authorized the agreement with SPS, but did not include Attachment A to
 22 the ordinance: the form agreement. A copy of Attachment A is included as Exhibit 2 to the Declaration of Roger
 Wynne.

23 ⁴ The City reserves the right to argue LUPA is an improper vehicle for pursuing the relief Petitioners seek.

1 (Petition). The subject property's owner must be named a party to any LUPA action.

2 RCW 36.70C.040(2) and .050. The Army owns Fort Lawton. The Army must be a party.

3 The Federal Rules of Civil Procedure also require joinder if: (1) complete relief is
4 impossible among the existing parties; or (2) the absent party has an interest in the action and
5 practically cannot protect that interest from outside the litigation:

6 A person who is subject to service of process and whose joinder will not deprive
7 the court of subject-matter jurisdiction must be joined as a party if:

8 (A) in that person's absence, the court cannot accord complete relief
9 among existing parties; or

10 (B) that person claims an interest relating to the subject of the action and is
11 so situated that disposing of the action in the person's absence may:

12 (i) as a practical matter impair or impede the person's ability to
13 protect the interest; or

14 (ii) leave an existing party subject to a substantial risk of incurring
15 double, multiple, or otherwise inconsistent obligations because of
16 the interest.

17 Fed. R. Civ. P. 19(a)(1).

18 The second basis for joinder is most acute because, besides its ownership interest in Fort
19 Lawton, the Army has an interest in the proper administration of the DoD process for disposing
20 surplus Army property—a process run by the Army for its own property. *See, e.g.*, 32 C.F.R.
21 § 176.5 (each military department may determine what property is surplus); 32 C.F.R. § 176.20
22 (responsibilities of military departments in the process). That process is governed by DoD
23 regulations Petitioners allege the City violated and the Army misapplied. *See* Dkt. # 1-2 at
pp. 10–21 (Petition). The Army's interests could be hampered by rulings interpreting those
regulations. The Army should be allowed to protect those interests directly.

1 The first basis for joinder is also relevant because, absent the Army, this Court cannot
 2 accord complete relief. If not a party, the Army would not be bound by a ruling for Plaintiffs and
 3 could continue to apply the DoD regulations contrary to this Court's ruling. For example,
 4 Plaintiffs allege any redevelopment plan is time barred and DoD "must proceed to disposing of
 5 [Ft. Lawton] through the alternative statutory means available to it." Dkt. # 1-2 at p. 11
 6 (Petition). If this Court agrees, but if the Army is not a party, the Army could lawfully continue
 7 to apply the DoD regulations rather than alternative statutory means.

8 The Army is subject to service of process. *See* 32 C.F.R. §§ 257.5(b) and 516.4(d)(5).
 9 Joinder of the Army would not deprive this Court of subject matter jurisdiction.

10 **B. SPS is a necessary party under Fed. R. Civ. P. 19(a).**

11 SPS should be joined under both of Fed. R. Civ. P. 19(a)'s bases. Again, the second basis
 12 is most acute because, as memorialized in its 2017 agreement with the City, SPS has an interest
 13 in defending its ability to seek surplus Ft. Lawton property from the Army. The Petition
 14 questions the lawfulness of SPS's alleged plans. Dkt. # 1-2 at pp. 13–14 (Petition). SPS cannot
 15 establish and defend its actual plans from outside this action.

16 The first basis is also relevant because, absent SPS, this Court cannot accord complete
 17 relief. For example, if this Court were to agree with Petitioners that SPS must take other steps
 18 before seeking property from the Army, *see* Dkt. # 1-2 at pp. 14–15 (Petition), that ruling would
 19 not prevent SPS as a non-party from dealing directly with the Army before taking those steps.

20 SPS is subject to service of process. *See* RCW 4.28.080(3). Joinder of SPS would not
 21 deprive this Court of subject matter jurisdiction.

VI. CONCLUSION

Because the Army and SPS are necessary parties and Petitioners have not joined them, the City respectfully asks the Court to order Petitioners to timely file and serve an amended petition naming the Army and SPS as respondents.

DATED September 27, 2019.

PETER S. HOLMES
Seattle City Attorney

By: s/Patrick Downs, WSBA # 25276
s/Roger D. Wynne, WSBA #23399

Assistant City Attorneys
Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
Ph: (206) 684-8200
Fax: (206) 684-8284
E-mail: patrick.downs@seattle.gov
roger.wynne@seattle.gov
Attorneys for Respondent City of Seattle

CERTIFICATE OF SERVICE

I certify that on this day I electronically filed this document, the Declaration of Roger Wynne in Support the City of Seattle's Motion to Join the U.S. Army and Seattle Public Schools as Respondents, and the [Proposed] Order Granting City of Seattle's Motion to Join the U.S. Army and Seattle Public Schools as Respondents with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

Allen T. Miller, WSBA # 12936
Law Offices of Allen T. Miller, PLLC
1801 West Bay Drive NW
Olympia, WA 98502
Phone: 360-754-9156
Email: allen@atmlawoffice.com
Attorney for Petitioners

I also certify that on this day I sent a copy of this document via e-mail to the same individual and to mmoc@atmlawoffice.com, lisa@atmlawoffice.com, and andrea@atmlawoffice.com.

Dated September 27, 2019, at Seattle, Washington.

s/Alicia Reise
ALICIA REISE, Legal Assistant